



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 28 2005

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Dave Trickel, Plant Manager
Wabash Alloys LLC
4365 Bradley Rd.
Cleveland, Ohio 44109

REPLY TO THE ATTENTION OF

Re: In the Matter of Wabash Alloys LLC
CAA Docket No.

CAA-05- 2005 0056 *[Signature]*

Dear Mr. Trickel:

I have enclosed a complaint filed against Wabash Alloys LLC, under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). The complaint alleges violations of Section 112 of the Clean Air Act, 42 U.S.C. § 7412, and the regulations at 40 C.F.R. Part 63, Subpart RRR.

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact, Thomas Krueger, Associate Regional Counsel (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886-0562.

Sincerely,

[Signature]
Stephen Rothblatt, Director
Air and Radiation Division

Enclosures

cc: George Baker, Cleveland Local Air Agency

IN THE MATTER OF:

Respondent .

Administrative Complaint

6. The NESHAP, at 40 C.F.R. § 63.1506(g)(1)(i), requires Wabash, as the owner or operator of a scrap dryer with emissions controlled by an afterburner and a lime injected fabric filter,

to maintain the 3-hour block average operating temperature of each afterburner at or above the average temperature established during the facility's performance test.

7. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2005).

8. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

9. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

General Allegations

10. Wabash owns and operates a secondary aluminum production facility at 4365 Bradley Road, Cleveland, Ohio (the "facility").

11. Wabash uses aluminum scrap as raw material in its aluminum production process and performs scrap drying at the

facility. Therefore Wabash is subject to the NESHAP for secondary aluminum production facilities at 40 C.F.R. §§ 63.1500 through 63.1519.

12. Wabash operates a scrap dryer that utilizes an afterburner and a lime-injected fabric filter to control emissions from the scrap dryer.

13. Wabash conducted a performance test for the scrap dryer afterburner on approximately December 15-19, 2003. Based on the results of the performance test, 1433 degrees Fahrenheit was established as the average temperature required for operation of the scrap dryer afterburner.

14. On November 24, 2004, Wabash submitted a semi-annual report as required by 40 C.F.R. §§ 63.1516(b) providing, among other things, information on the performance of the scrap dryer afterburner for the six month period from March to September, 2004.

15. Wabash's semi-annual report indicated that Wabash operated the scrap dryer afterburner at average temperatures below 1433 degrees Fahrenheit during at least the following time periods:

Date	Times	Hours of Violation
March 23, 2004	0300 to 2359	21
March 24, 2004	0000 to 1015	10.25
March 24, 2004	1830 to 2030	2
March 28, 2004	1500 to 2315	8.25
March 29, 2004	0100 to 2345	22.75

March 30, 2004	0000 to 2345	23.75
March 31, 2004	1534 to 1600	0.5
May 10, 2004	0300 to 1045	7.75

Count I

16. Complainant incorporates paragraphs 1 through 13 of this complaint, as if set forth in this paragraph.

17. Based on the information contained in Wabash's November 24, 2004, semi-annual report, U.S. EPA determined that Wabash failed to maintain the 3-hour block average operating temperature of the afterburner controlling its scrap dryer's emissions at or above the average temperature established during the facility's performance test for approximately 96.25 hours.

18. Wabash violated the NESHAP for secondary aluminum production facilities at 40 C.F.R. § 63.1506(g)(1)(i).

19. On December 30, 2004, U.S. EPA issued a finding of violation to Wabash for violations of the NESHAP for secondary aluminum production facilities.

20. On February 7, 2005 and April 21, 2005, representatives of Wabash and U.S. EPA met to discuss the finding of violation.

Proposed Civil Penalty

21. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

22. Based upon an evaluation of the facts alleged in this complaint, the facts presented by Wabash in its meetings with U.S. EPA, and the factors in Section 113(e) of the Act,

Complainant proposes that the Administrator assess a civil penalty against Respondent of \$18,600. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.

23. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

24. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules) at 40 C.F.R. Part 22 (2004) govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

25. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

26. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the

Consolidated Rules. Complainant has authorized Thomas Krueger to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Krueger at (312) 886-0562. Mr. Krueger's address is:

Thomas Krueger (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Penalty Payment

27. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Thomas Krueger and to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Opportunity to Request a Hearing

28. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a

hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 27 through 32 below.

Answer

29. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 23, above, and must serve copies of the written answer on the other parties.

30. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

31. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

32. Respondent's failure to admit, deny, or explain any

material factual allegation in the complaint constitutes an admission of the allegation.

33. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 26 above.

34. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

35. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Thomas Krueger at the address or phone number specified in paragraph 24, above.

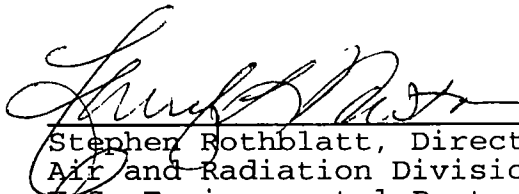
36. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing

a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.


Continuing Obligation to Comply

37. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

9/28/05
Date



Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3509

DA-05- 2005 0056


In the Matter of Wabash Alloys, LLC
Docket No.

CAA-05-2005 0056 *[Signature]*

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number _____ to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint, by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

05 SEP 28 P 2:51
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL PROTECTION AGENCY

on the 28th day of September, 2005.

[Signature: Loretta Shaffer]
Loretta Shaffer, Secretary
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 70010320000590256572